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City of Los Angeles Department of Airports v. U.S. Specialty Insurance Company

Court of Appeal, First District, Division 5, California - June 15, 2022 - Cal.Rptr.3d - 2022 WL 2156119

City department of airports brought action against manufacturer of airport firefighting trucks and surety on performance bond alleging that manufacturer breached build contract and seeking enforcement of performance bond.

Manufacturer brought separate contract action against department and actions were consolidated.

The Superior Court entered judgment upon jury verdict in favor of city on all claims, awarded department $1 in nominal damages, and denied motions by department and surety for contractual attorney fees. Department and surety appealed. The Court of Appeal reversed and remanded. On remand, the Superior Court denied applications by department and surety for contractual attorney fees as a prevailing party. Surety appealed.

The Court of Appeal held that trial court did not abuse its discretion in determining that surety was not prevailing party entitled to contractual attorney fees.

Trial court did not abuse its discretion in determining that surety on performance bond with manufacturer who agreed to build airport firefighting trucks for city department of airports was not “prevailing party” entitled to contractual attorney fees, in consolidated contract actions by department and manufacturer, even though surety asserted no affirmative claims for damages against department and department was limited to nominal damages, since surety and manufacturer were represented by same counsel at trial, submitted joint trial brief, and agreed to joint jury instructions rendering surety liable if manufacturer was found liable, such that success on contract claims was important objective, not just limiting damages, and jury found in favor of department on all contract claims.

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